



Report of the Standing Orders Committee

1. The Standing Orders Committee, set up by the Conference at its first sitting on 1 June 2004, met on 4 June 2004. It was composed of 80 members (28 Government members, 46 Employer members and six Worker members).

2. The Committee elected its Officers as follows:

Chairperson and Reporter: Mr. Jules M. Oni (Government member, Benin).

Vice-Chairpersons: Ms. Lucia Sasso Mazzufferi (Employer member, Italy);
Ms. Cecilia Brighi (Worker member, Italy).

3. The Committee had before it a Note concerning Standing Orders questions (*Provisional Record* No. 2), which contained proposals by the Governing Body at its 289th Session (March 2004)¹ that the International Labour Conference, for a trial period of at least three years, replace the provisions of its Standing Orders concerning the Credentials Committee with the new provisions reproduced in the appendix to the Note. These provisions are the result of a process of deliberation requested by the Credentials Committee at the 90th and 91st Sessions of the Conference with a view to improving its work and effectiveness.²
4. The Chairperson recalled that following a request made by the Credentials Committee the International Labour Conference had requested that the Governing Body examine, as a matter of urgency, the conditions under which the means of action could be utilized that the Organization has at its disposal to ensure the well functioning of tripartism. Notably, with regard to tripartite representation within the Organization, article 3, paragraph 1, of the Constitution obligates Members to ensure that the delegations of the Employers and Workers to the Conference are as representative as possible of the employers and workers of their countries and that they are nominated by them in complete independence. The verification of this obligation is reserved to the Conference on the basis of recommendations that are presented to it by the Credentials Committee.
5. The representative of the Secretary-General (the Legal Adviser of the Conference) added that the Governing Body had examined two distinct means to attain these objectives that were submitted to the Conference: the first are modifications to the Standing Orders of the Conference; and the second are practical measures that could be carried out without

¹ GB.289/11.

² ILO: Third report of the Credentials Committee, International Labour Conference, 90th Session, *Provisional Record* No. 5D; Second report of the Credentials Committee, International Labour Conference, 91st Session, *Provisional Record* No. 5C. As regards examination of the question by the Governing Body, see also the following Governing Body documents: GB.286/LILS/3, GB.286/13/1, GB.288/LILS/4, GB.288/10/1 and GB.289/LILS/1/1.

modification to the existing Standing Orders framework. The Governing Body considered that, account being taken for its practical importance, this reform should be carried out on a temporary basis. Consequently, the proposals would be evaluated after a “probationary” period before they could be definitively adopted. At the end of this period, the provisions would automatically lapse unless the Conference takes a decision to renew them. If the Conference adopts the proposed provisions they will come into effect from the 93rd Session (2005) and will remain in force, in the absence of any decision to the contrary by the Conference, until the 96th Session (2007). Thereafter, the Governing Body will have to evaluate the system with a view to reporting to the Conference in June 2008. It being understood that the Conference reserves the possibility to modify or annul, at any time, the provisions and practical measures that are not pertinent or that reveal themselves to be inefficient.

6. The Legal Adviser summarized the proposed amendments to the Standing Orders. The modification proposed to the second paragraph of article 5 of the Standing Orders concerns the mandate of the Credentials Committee. In addition to the three elements of its mandate that are contained in the initial paragraph, two had been added: firstly, in paragraph 2(b) the possibility to examine objections relating to the failure to deposit credentials of an Employers’ or Workers’ delegate; and, secondly, in paragraph 2(d) the monitoring of any situation with regard to the observance of the provisions of article 3 or article 13, paragraph 2(a), of the Constitution that the Credentials Committee would be able to follow up at the request of the Conference.
7. Concerning article 26 (Examination of credentials) it was proposed to limit this article to the first two paragraphs currently in-force, the other paragraphs being divided into articles 26bis, ter and quater. Paragraphs 1 to 5 of article 26bis (Objections) correspond to paragraphs 4 to 8 of the current article 26 with minor drafting changes. Whereas paragraphs 6 and 7 of article 26bis are new. Paragraph 6 states that if the Credentials Committee considers unanimously that the issues raised by an objection relate to a violation of the principles of freedom of association which has not already been examined by the Committee on Freedom of Association, it may propose referral of the question to that Committee. Paragraph 7 provides, with the same safeguards as for the preceding paragraph, that where the Credentials Committee considers that it is necessary to monitor the situation it may propose this to the Conference. The government concerned by the objection shall report on such questions that are deemed necessary, to the subsequent session of the Conference when it submits its delegation’s credentials.
8. As for article 26ter (Complaints) paragraphs 1 to 3 correspond to paragraphs 9 to 11 of the current article 26 with minor drafting changes. In new paragraph 4, the Credentials Committee may propose to the Conference to monitor the complaint. The government concerned by the complaint shall report on such questions that are deemed necessary to the subsequent session of the Conference when it submits its delegation’s credentials. The safeguards are the same as those contained in paragraph 7 of article 26bis. A new article 26quater (Monitoring) provides that the Credentials Committee may unanimously propose the monitoring of any situation relating to respect by a member State for the provisions of articles 3 or 13, paragraph 2(a), of the Constitution.
9. The Employer members also recalled the source of the proposed provisions that were before the Standing Orders Committee. The Credentials Committee had unanimously requested reforms with a view to improving its functioning and increasing its visibility, as well as, with the objective to assure that the nominations of the delegations to the Conference are in accordance with the Constitution of the ILO and, thus, fully respect tripartism. The Conference had mandated the Governing Body to study the question. The discussions that had taken place in its Committee on Legal Issues and International Labour

Standards (LILS) had permitted the governments and the social partners to consider a series of practical measures that could already be put into place at the present session of the Conference.

- 10.** The Employers highlighted the importance that they attach to the interim nature of the proposed measures, which should be re-examined after a three-year period of application. The speaker also expressed the Employers' agreement with the possibility of the Credentials Committee referring certain questions to the Committee on Freedom of Association under the following three conditions: (a) a unanimous decision taken by the Credentials Committee; (b) an express decision by the Conference; and (c) that the Committee on Freedom of Association has not already examined the issues raised by the objection.
- 11.** Regarding the proposed practical measures, the Employer members approved the publication of an information brochure that would accompany the invitation to the Conference that is sent to the governments. In this manner, the attention of governments would be drawn to the applicable rules that apply to the nominations of their delegations. The Employers also approved the development of a data bank containing Credentials Committee reports from the last 10 to 30 sessions of the Conference. Over the years, the Credentials Committee has developed a jurisprudence that could be of great utility to the governments and the social partners.
- 12.** As to bringing forward the date of publication of the first official list of delegations, the Employer members did not approve the proposals described in paragraphs 10 and 11 of the Note to the extent that this would move forward the deadline for the presentation of objections. It was considered that the possibility to obtain advance information regarding the nominations of the delegations would represent a considerable advantage, as it would be possible to establish in advance the necessary contacts with the national federations of employers so as to identify eventual difficulties and, where appropriate, to prepare objections. However, bringing forward the commencement of the 72-hour period from which an objection must be lodged could not be accepted by the Employers because of practical reasons. The preparation of objections sometimes requires complicated work that takes time, notably due to linguistic differences or technical difficulties that exist with the employers' federations of certain countries. The Employers wished to maintain the current practice as contained in the existing article 26, paragraph 4(a), wherein an objection must be lodged "within 72 hours from 10 a.m. of the date of the publication in the *Provisional Record* of the name and function of the person to whose nomination objection is taken, ...". The Employers requested that the wording of the proposed article 26bis, paragraph 1(a), be modified so that the publication of the official list of delegations on the basis of which an objection is lodged will be the first day of the Conference.
- 13.** The Legal Adviser confirmed the necessity of an objective basis for the calculation of the commencement of the 72 hours. The formulation of the current article 26, paragraph 4(a), offered a certain amount of flexibility to fix the commencement of the 72-hour period, which had in turn permitted the Governing Body to request the advancement of the publication of the first official list of delegations by one week for the present session of the Conference that would serve as the basis for the submission of objections.
- 14.** The Worker members were supportive, in a general sense, of all the practical measures aimed at improving the functioning of the Credentials Committee, increasing its visibility and promoting a better understanding of its role by all constituents. They were also in agreement with the measures proposed to strengthen the control and monitoring functions of the Credentials Committee, in particular, where there is unanimity to refer a case to the Committee on Freedom of Association. The Workers endorsed the proposal to establish a

data bank containing the reports of the Credentials Committee that would be accessible to the public as well as the publication online of credentials one week before the commencement of the Conference that could enable the advancing of the work of the Credentials Committee. The Workers were of the opinion that the Office, in this way, could signal to governments potential problems thus contributing to a friendly resolution before the Conference of any potential issue regarding the nomination. However, the Workers agreed with the Employers that the deposit of an objection should be within 72 hours from 10 a.m. of the date of publication of the *Provisional list of delegations* that would be published on the first day of the Conference, rather than from the publication online of the credentials that would precede the commencement of the Conference as described in paragraphs 10 and 11 of the Note.

15. The Legal Adviser indicated that the Office could only signal potential difficulties to governments.
16. In addition, the Worker representative proposed that article 5, paragraph 2(a), of the interim provision in the Standing Orders of the Conference concerning the verification of credentials, could be clarified by substituting “government, employers and workers” for “persons” after “credentials of”. This would avoid possible misinterpretation because the Credentials Committee should verify only the credentials of delegates and their advisers and all other accredited members of a Government delegation. The text proposed by the Office would enable it to verify the person accredited by a non-governmental organization and thus would not be acceptable.
17. The Government member of Lebanon endorsed the view that the deposit of an objection should be within 72 hours from 10 a.m. of the date of publication of the first *Provisional list of delegations* that would be published on the first day of the Conference, rather than from the publication online of the credentials that would precede the commencement of the Conference as described in paragraphs 10 and 11 of the Note. She also expressed support for a three-year trial basis of the interim provisions proposed to the Conference that are intended to strengthen the control and monitoring functions of the Credentials Committee. In addition, the Government member of Lebanon raised two questions: first, whether the International Labour Conference should not be enabled to discuss a referral by the Credentials Committee to the Committee on Freedom of Association in the plenary; and, second, the type of information that would be contained in the data bank.
18. In reply to the Government member of Lebanon, the Legal Adviser explained that the International Labour Conference can either accept or reject a referral by the Credentials Committee to the Committee on Freedom of Association and that it could request a vote under the Standing Orders of the Conference. Where a vote takes place, any delegate who so requests to explain his or her vote may do so, briefly, immediately after the voting. Regarding the information to be contained in the data bank, the Legal Adviser drew the Committee’s attention to the Governing Body’s recommendation that the data bank be comprised of the reports of the Credentials Committee of recent sessions of the Conference.³ The data bank would be public and could provide constituents, through the jurisprudence of the Committee, with useful information as to good and bad practices as pertaining to credentials. In this respect, it also addresses the concern for transparency.
19. The Government member of the Libyan Arab Jamahiriya recalled that the proposed amendments and practical measures had been discussed at length in the Governing Body.

³ GB.289/11, para. 13.

The objective being to improve the functioning of the Credentials Committee and to address the deficiencies noted in the past. In effect, the Committee did not possess the necessary means to resolve difficult cases. With this in mind, the proposed provisions were considered very useful, including the possibility to refer certain questions to the Committee on Freedom of Association. Nevertheless, there remain certain apprehensions regarding this subject and experience will show if the proposed provisions constitute true improvements.

20. The Government member of Canada highlighted that the proposed interim provisions came from the Credentials Committee itself and that the Governing Body had examined this complex subject. Bearing this in mind, the Government member of Canada endorsed the adoption of the interim provisions on a trial basis of three years, as she observed that the Credentials Committee plays an important role in the International Labour Conference.
21. In response to the proposal made by the Worker members for increased clarity of article 5, paragraph 2(a), the Legal Adviser noted that if "... persons accredited to the Conference;" were primarily intended for the delegates and advisers nominated by the governments, the Credentials Committee also examines the credentials of any other person accredited to the Conference as is done for the representatives of intergovernmental organizations and international non-governmental organizations.
22. The Worker members were not satisfied with the Legal Adviser's explanation and urged that article 5, paragraph 2(a), be returned to its original wording that the Credentials Committee examine the credentials of the delegates and their advisers. The Employer members joined this view.
23. The Government member of the Libyan Arab Jamahiriya was of the view that the Credentials Committee should certainly examine the credentials of the intergovernmental organizations and the international non-governmental organizations. It was the latter that could pose difficulties, as had appeared from a precedent a number of years ago. The Conference should not be improperly utilized by international non-governmental organizations.
24. The Government member of Finland questioned the practical effect of the proposed provision regarding article 5, paragraph 2(a). The Legal Adviser explained that, as compared to the current version of the Standing Orders, this modification was intended to conform the Standing Orders with the ongoing practice of the Credentials Committee, which in addition to examining the objections and complaints regarding the Employers' and Workers' delegates also examines the credentials of any person accredited to the Conference.
25. The Government member of Nigeria, concurring with the views of the Worker representative, considered that if the Credentials Committee did not have the right to examine the credentials of international non-governmental organizations there was no reason to further amend article 5, paragraph 2, of the Standing Orders of the Conference. In addition, she added that such an amendment was not necessary as the Governing Body examined the admissions of those international non-governmental organizations to the Conference.
26. The Government member of the Libyan Arab Jamahiriya explained, and the Legal Adviser confirmed, that there was a difference between the invitation extended by the Governing Body to an international non-governmental organization to attend the Conference and the accreditation of that organization's representatives, as only the latter is the subject of an examination of credentials.

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- 27.** The Government member of Côte d'Ivoire, supported by the Government members of Nigeria and Lebanon, deemed that the amended drafting of article 5 as it now stood was not clear and systematic enough. He suggested that paragraph 2(a) should clearly state that the Credentials Committee shall "examine the credentials of delegates and other persons accredited to the Conference", whereas paragraph 2(b) should remain unchanged.
- 28.** In view of the concerns raised in the Standing Orders Committee, the Legal Adviser proposed that article 5, paragraph 2(a), be deleted and that in article 5, paragraph 2(b), it be reworded as "The Credentials Committee shall examine, in accordance with the provisions of section B of Part II: (a) the credentials as well as any objection relating to the credentials of delegates and their advisers or to the failure to deposit credentials of an Employers' or Workers' delegate;". The Employer and Worker members endorsed the Legal Adviser's proposal.
- 29.** The Government member of Canada supported the last amendment proposed by the Legal Adviser, noting that the Credentials Committee had the power to examine the credentials of international intergovernmental and non-governmental organizations.
- 30.** The Committee recommends that the Conference adopt, on an interim basis and for a duration of three years starting from the 93rd Session of the Conference (June 2005), the following amendments to its Standing Orders, as modified. These amendments will be published separately with a view to their being published with the Constitution of the ILO and the Standing Orders of the Conference.

Geneva, 10 June 2004.

(Signed) Jules M. Oni,
Chairperson and Reporter.

Appendix

Interim provisions concerning verification of credentials, effective from the 93rd Session (June 2005) to the 96th Session (June 2007) of the International Labour Conference

INTERNATIONAL LABOUR CONFERENCE VERIFICATION OF CREDENTIALS

ARTICLE 5

Credentials Committee

1. The Conference shall, on the nomination of the Selection Committee, appoint a Credentials Committee consisting of one Government delegate, one Employers' delegate and one Workers' delegate.
2. The Credentials Committee shall examine, in accordance with the provisions of section B of Part II:
 - (a) the credentials as well as any objection relating to the credentials of delegates and their advisers or to the failure to deposit credentials of an Employers' or Workers' delegate;
 - (b) any complaint of non-observance of paragraph 2(a) of article 13 of the Constitution;
 - (c) the monitoring of any situation with regard to the observance of the provisions of article 3 or article 13, paragraph 2(a), of the Constitution about which the Conference has requested a report.

PART II

Standing Orders concerning special subjects

SECTION B

Verification of credentials

ARTICLE 26

Examination of credentials

1. The credentials of delegates and their advisers and of all other accredited members of the delegation of a member State shall be deposited with the International Labour Office at least 15 days before the date fixed for the opening of the session of the Conference.
2. A brief report upon these credentials shall be drawn up by the Chairman of the Governing Body. It shall, with the credentials, be made available for inspection on the day before the opening of the session of the Conference and shall be published on the day of the opening of the session.
3. The Credentials Committee appointed by the Conference in pursuance of article 5 of the Standing Orders of the Conference shall consider the credentials, as well as any appeal, objection, complaint or report concerning them.

ARTICLE 26BIS

Objections

1. An objection in pursuance of article 5, paragraph 2(b), shall not be receivable in the following cases:

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- (a) if the objection is not lodged with the Secretary-General within 72 hours from 10 a.m. of the first day of the Conference, date of publication in the *Provisional Record*, of the official list of delegations on the basis of which the objection to the inclusion or exclusion of the name and function of a person is submitted. If the objection is based on a revised list, the time limit shall be reduced to 48 hours;
 - (b) if the authors of the objection remain anonymous;
 - (c) if the author of the objection is serving as adviser to the delegate to whose nomination objection is taken;
 - (d) if the objection is based upon facts or allegations which the Conference, by a debate and a decision referring to identical facts or allegations, has already discussed and recognized to be irrelevant or devoid of substance.

2. The procedure for the determination of whether an objection is receivable shall be as follows:

- (a) the Credentials Committee shall consider in respect of each objection whether on any of the grounds set forth in paragraph 1 the objection is irreceivable;
- (b) if the Committee reaches a unanimous conclusion concerning the receivability of the objection, its decision shall be final;
- (c) if the Credentials Committee does not reach a unanimous conclusion concerning the receivability of the objection, it shall refer the matter to the Conference which shall, on being furnished with a record of the Committee's discussions and with a report setting forth the opinion of the majority and minority of its members, decide without further discussion whether the objection is receivable.

3. The Credentials Committee shall consider whether every objection deemed to be receivable is well founded and shall as a matter of urgency submit a report thereon to the Conference.

4. If the Credentials Committee or any member thereof submits a report advising that the Conference should refuse to admit any delegate or adviser, the President shall submit this proposal to the Conference for decision, and the Conference, if it deems that the delegate or adviser has not been nominated in conformity with the requirements of the Constitution, may, in accordance with paragraph 9 of article 3 thereof, refuse by two-thirds of the votes cast by the delegates present to admit the delegate or adviser. Delegates who are in favour of refusing to admit the delegate or adviser shall vote "Yes"; delegates who are opposed to refusing to admit the delegate or adviser shall vote "No".

5. Pending final decision of the question of his admission, any delegate or adviser to whose nomination objection has been taken shall have the same rights as other delegates and advisers.

6. If the Credentials Committee considers unanimously that the issues raised by an objection relate to a violation of the principles of freedom of association which has not already been examined by the Governing Body's Committee on Freedom of Association, it may propose referral of the question to that Committee. The Conference shall decide, without discussion, on such proposals for referral.

7. When, in the light of the examination of an objection, the Credentials Committee unanimously considers that it is necessary to monitor the situation, it may propose this to the Conference, which shall decide, without discussion, on the proposal. If it is so decided, the Government concerned shall report on such questions that the Credentials Committee judges necessary, to the subsequent session of the Conference when it submits the delegation's credentials.

ARTICLE 26TER

Complaints

1. The Credentials Committee may consider complaints that a Member has failed to comply with paragraph 2(a) of article 13 of the Constitution where:

- (a) the Member is alleged to have failed to pay the travelling and subsistence expenses of one or more of the delegates that it has nominated in accordance with article 3, paragraph 1, of the Constitution; or

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- (b) the complaint alleges a serious and manifest imbalance as between the number of Employer or Worker advisers whose expenses have been covered in the delegation concerned and the number of advisers appointed for the Government delegates.

2. A complaint referred to in paragraph 1 shall not be receivable in the following cases:

- (a) if the complaint is not lodged with the Secretary-General of the Conference before 10 a.m. on the seventh day following the opening of the Conference and the Committee considers that there is insufficient time to deal with it properly; or
- (b) if the complaint is not lodged by an accredited delegate or adviser alleging non-payment of travel and subsistence expenses in the circumstances set out under (a) or (b) of paragraph 1 or by an organization or person acting on his or her behalf.

3. The Credentials Committee shall, in its report, present to the Conference any conclusions that it has unanimously reached on each complaint considered by it.

4. When, in the light of the examination of an objection, the Credentials Committee unanimously considers that it is necessary to monitor the situation, it may propose this to the Conference, which shall decide, without discussion, on the proposal. If it is so decided, the Government concerned shall report on such questions that the Credentials Committee judges necessary, to the subsequent session of the Conference when it submits the delegation's credentials.

ARTICLE 26QUATER

Monitoring

The Credentials Committee also monitors any situation relating to respect by a member State for the provisions of articles 3 or 13, paragraph 2(a), of the Constitution with regard to which the Conference has requested the government concerned to report. With this objective, the Committee shall report to the Conference on the evolution of the situation. It may unanimously propose any one of the measures contained in paragraphs 4 to 7 of article 26bis or paragraphs 3 and 4 of article 26ter. The Conference shall decide, without discussion, on such proposals.

